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MUNICIPAL CORPORATIONS—STREETS—NEGLIGENCE—PLEADING.—From the iron works of the defendant, boiling hot water was expelled through a municipal drain or sewer, and delivered into an open and unprotected space where the inhabitants were accustomed to travel and infants to play. The plaintiff, an infant three years of age, having sustained severe injuries from falling into an open ditch, filled with the scalding water, thereupon brought suit against the defendant for creating and maintaining a "common nuisance and a place of danger to the inhabitants of the neighborhood." The defendant demurred on the ground that the facts did not state a cause of action. *Held,* that the facts alleged do not show that the act of defendant was an unlicensed and illegal act and that the demurrer should be sustained. *Ellis* v. *Pennsylvania Iron Works Company* (1909), — N. J. —, 74 Atl. 667.

In holding that the allegation "that the defendant did create and maintain a common nuisance and a place of danger to the inhabitants" in itself exhibits no cause of action, the court relied upon the cases of *Stephens and Condit Transportation Company* v. *Central Railroad Company,* 33 N. J. L. 229; and *Mercantile Bank* v. *Frost,* 62 N. J. L. 476, 41 Atl. 685, which rest upon the well established principle that "the rules of pleading clearly require a statement of facts which show to a reasonable certainty that the party sued has done something rendering him liable to the action." Another very old rule of pleading is that if the meaning of the words is equivocal, they should be construed most strongly against the party pleading them. *Dovaston* v. *Payne,* 2 H. Black. 527, 530; Coke Litt. 303, b; *People* v. *Fesler,* 145 Ill. 150; *Boynton* v. *Renwick,* 46 Ill. 280; *Blanck* v. *Pausch,* 113 Ill. 60; *People, Brinkehoff* v. *Swigert,* 107 Ill. 494; *Groff* v. *Ankenbrandt,* 124 Ill. 51; *Earle* v. *Westchester F. Ins. Co.,* 29 Mich. 414. A different allegation is required when the act committed is prima facie lawful from that required when it is prima facie unlawful. In the case at bar there was at least color of right in the act of the defendant and it would seem that the demurrer should be sustained, no matter whether the rule of the common law that all doubts should be resolved against the pleader, or the rule of the new procedure, that the construction should favor the pleader, with a view to substantial justice, is applied.

PARTNERSHIP—PARTNERSHIP PROPERTY—GOOD WILL.—Plaintiff and defendant formed a partnership to engage in a business enterprise. By the terms of the agreement the partnership was to continue for five years, but no mention was made of the ultimate disposal of the good will. Upon plaintiff's retirement from the firm defendant assumed control of the machinery and continued the business. Plaintiff brought this action for his proportionate share of the value of the machinery and of the partnership good will. *Held,* that defendant must account to plaintiff for the machinery and the good will of the former partnership. *Hutchins* v. *Page* (1909), — Mass. —, 90 N. E. 565.

In announcing the rule by which to determine the amount to be paid for the machinery, the court held: Where partnership property is of a special design, and on dissolution the continuing partner prefers to acquire the same,

he may be charged with the fair value to him, or to some one in his position, on an accounting, and not the value in the open market. This rule is supported by *Flagg* v. *Stowe,* 85 Ill. 164; *Appeal of Barclay,* — Pa. —, 8 Atl. 169; *Weldon* v. *Beckel,* 10 Daly 472. The rule controlling the disposal of the partnership good will is not so well settled. The old rule in England seems to have been, "that when one partner retires from the firm and the business, the continuing partner will acquire the benefit arising out of the good will for nothing." LINDLEY, PARTNERSHIP, p. 444; *Hall* v. *Hall,* 20 Beav. 139; *Kennedy* v. *Lee,* 3 Mer. 440. And in this country it has been held, "where the partnership is for a certain term, the retiring partner cannot upon expiration of that term claim an interest in the good will of the firm." *Van Dyke* v. *Jackson,* 1 E. D. Smith (N. Y.) 419; see also *Appeal of Musselman,* 62 Pa. St. 81. The present case is supported by the apparent weight of authority in this country. Where one partner continues the business after the other's retirement from the firm and business, he must account to the latter for the reasonable value of the good will. *Dayton* v. *Wilkes,* 17 How. Prac. 510; *Sheppard* v. *Boggs,* 9 Neb. 257. The modern rule in case of the death of one of the partners, is that the good will does not pass to the survivor, but must be accounted for the same as other partnership property. *Fisk* v. *Fisk,* 77 N. Y. App. Div. 83; *Tennant* v. *Dunlap,* 97 Va. 234. An opposite view was announced in *Lobeck* v. *Lee-Clarke-Anderson Hdw. Co.,* 37 Neb. 158.

POST OFFICE—OFFENSES AGAINST POSTAL LAWS—USE OF MAILS TO DEFRAUD.—Defendants were officers of a manufacturing corporation owning a plant and actually engaged in manufacturing and selling the product. In order to sell an increased issue of the stock, defendants sent through the mails, letters to certain persons representing that the company desired to establish branch selling houses and to employ managers therefor at a stated salary. The letters also contained false representations as to the profits and dividends of the company and by their means certain of the persons addressed were induced to purchase stock of the company at par in the belief that they would be appointed branch managers. *Held,* that an indictment charging such facts and that the representations were knowingly false, did not charge the offense of using the mails to defraud, within the meaning of Rev. St. § 5480 (U. S. Comp. St. 1901, pp. 36, 96); it not being alleged that the stock was not worth the price paid for it. *Miller* v. *United States* (1909), — C. C. A., 7th Cir. —, 174 Fed. 35.

The element, the lack of which the court held defeated the application of the statute, was that the persons who bought the stock were not defrauded of any property which they then had but only of an expected employment and salary. The mere intention of the defendants not to meet the expectations of the persons responding to the letters in the matter of their employment as managers and of their salary and profits in consequence thereof, and of the earnings of the company and the dividends therefrom would not in the absence of intended loss to such persons in the investment made, constitute a crime under § 5480. The court distinguished the principal case from the cases cited by the Government, saying that in those cases an essential element